

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

A. A.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

Case No. N 2006060494

DECISION

Ralph J. Venturino, Administrative Law Judge for the Office of Administrative Hearings, State of California, heard this matter on September 6, 2006, in Yuba City, California.

Claimant was not present at the hearing and was represented by one of his authorized representatives and caretakers, his maternal grandmother, Mary M.

Cynthia Kenley, Supervisor, represented the service agency, Alta California Regional Center (ACRC).

Evidence was received and the matter was submitted for decision on September 6, 2006.

ISSUE

Whether ACRC is obligated to fund 155 respite hours already completed by a respite worker when ACRC did not authorize the hours?

FINDINGS OF FACT

1. Claimant is a consumer who is entitled to respite care services under his current and relevant Individual Program Plan (IPP). Under ACRC Guidelines, claimant qualified for the highest range of respite care (Range "C": 61-96 hours per quarter).

2. In addition to possible changes made to an IPP after periodic reviews, a claimant can ask the planning team for additional hours for exceptional circumstances. Claimant's caretaker grandmother, Mary M., requested and received from ACRC, additional respite hours based upon written and verbal communications. The additional hours were to help her care for claimant while she was to undergo and recover from extensive double knee surgery.

3. During the time frame relevant to this appeal (January through June 2006), ACRC authorized 281 hours in addition to the 192 quarterly hours that would normally be available to claimant under a Range "C" qualification.

4. Mary M. had knee surgery on March 27, 2006, and was recovering during April 2006.

5. On May 25, 2006, ACRC issued a "Notice of Proposed Action" (NPA) to claimant and his caretaker grandmother, along with a letter of explanation for the denial. The NPA stated "[ACRC] is denying a request to pay for respite hours used by [claimant's caretaker] that were not authorized in the IPP and by the planning team." The reason for the action was that "Services and Supports for the consumer must be specified in the consumer's IPP. [Claimant's caretaker] used approximately 155 hours over and above the approved authorized respite hours."¹

6. On June 1, 2006, claimant filed a request for fair hearing.

Facts Relating to Authorized Additional Respite Hours

7. Discussions between claimant's caretaker grandmother and ACRC concerning additional respite hours during claimant's caretaker's knee surgery recovery began as far back as February 2005. The issue was revisited in September 2005 and subsequent discussions occurred in January, February, and April 2006. The 2006 discussions included the specific number of hours that would be available for the two quarters involved, including the requested additional hours.

8. One component of the authorized additional hours included a 24 hour per quarter increase to the 96 hour maximum in-home care amount (totaling 120 hours per quarter). At this time, claimant was not in school and required more in-home care.

9. Another component of the authorized additional hours came from converting potential additional "out-of-home" respite costs to in-home respite hours. ACRC used a conversion formula based upon a scored assessment sheet (Consumer Residential Service Profile or "CRSP"). Claimant achieved the highest level of need based upon the CRSP

¹ The NPA is the only evidence presented by either party concerning the total number of unfunded respite hours. The approximate number of 155 total unfunded hours was not disputed.

(Level 4I). ACRC authorized an additional 209 respite hours for the year based upon its conversion formula.

10. A final component of the authorized additional hours was an additional 24 hours authorized for the second quarter.²

11. During the first two quarters of 2006 (January through June), claimant had a total of 473 authorized respite hours available for use, 316 of which ACRC specifically authorized for the second quarter. Based upon the record, the 316 hours included 120 quarterly hours, 172 hours remaining from the 209 conversion hours,³ and the unexplained additional 24 hours.

12. All 473 respite hours ACRC authorized were paid by ACRC based upon the IPP and supplemental IPP assessments.

Facts Relating to Representations of Authorized Hours

13. In October 2005, there was confusion concerning the number of quarterly respite hours for claimant in the fourth quarter of 2005. The respite agency informed claimant's caretaker that there were 120 hours when ACRC believed that there were fewer.⁴ The POS indicated the hours were "through 10/31/05" but a handwritten note in red ink indicated that the fourth quarter was included. ACRC authorized 120 hours for the fourth quarter subsequent to the time of confusion.

14. In the fourth quarter of 2005, there was also confusion within ACRC concerning the usual authorized quarterly hours. Claimant had been approved for 96 hours per quarter but there was an indication that the approved hours were only 60 per quarter. ACRC gave the respite agency a verbal authorization, for an increase from 60 hours to 96 hours per quarter, after facsimile transmission of the authorization failed.

15. On January 19, 2006, ACRC informed claimant's caretaker that claimant was eligible for 336 conversion hours (the eventual corrected number of conversion hours would turn out to be 209).

² The record was unclear where the 24 additional hours came from since it appeared to reflect that all 120 quarterly hours were used in the first quarter (the first quarter authorization was for 157 hours [120 quarterly hours + 37 conversion hours]).

³ Claimant used 37 conversion hours in March 2006.

⁴ The record reflected that the 120 hours was an increase from the usual 96 for claimant. The increase was in anticipation of claimant's caretaker's surgery, which was then postponed.

16. On January 23, 2006, while claimant's caretaker was planning for claimant's care during her surgery, ACRC confirmed with claimant's caretaker that claimant was eligible for 336 conversion hours.⁵

17. On February 23, 2006, ACRC finally corrected its mistake and informed claimant's caretaker that claimant was eligible for only 209 conversion hours, not 336. ACRC corrected its mistake before claimant's caretaker's surgery and before the additional 155 hours were used in April 2006.

18. On April 14, 2006, when claimant's caretaker believed there were only 75 hours left in the second quarter, she called ACRC to request more hours.

19. On April 18, 2006, ACRC informed claimant's caretaker that claimant had 172 hours remaining and that these hours were from the 209 conversion hours.

20. Based upon the conversation between ACRC and claimant's caretaker on April 18, 2006, claimant's caretaker believed that ACRC would be helping claimant get more hours.

21. After the conversation between ACRC and claimant's caretaker on April 18, 2006, ACRC inquired with the respite agency and the respite agency informed ACRC that claimant had only 106 hours left, not 75, and not 172. There is no evidence in the record that ACRC informed claimant's caretaker of these discrepancies, at that time.

22. On April 18, 2006, it was not unreasonable for claimant's caretaker to assume claimant had more than 75 hours, based upon past inconsistencies.

23. On April 18, 2006, it was not unreasonable for claimant's caretaker to assume that ACRC could authorize more than the hours authorized at that time, based upon ACRC's past authorization conduct.

24. Also on April 18, 2006, ACRC prepared a Purchase of Service (POS) authorization for 316 hours relating to the second quarter that incorrectly reflected 312 hours.

25. On April 25, 2006, claimant's respite worker obtained the incorrect POS (indicating 312 hours, not 316), dated April 24, 2006, from the respite agency. The POS reflected 312 hours after a slash and a separate indication that contained the number 120. The POS does not indicate the details of the components of the 312 or 120 numeric indications.

26. On April 25, 2006, it was not unreasonable for claimant's caretaker to assume that ACRC had authorized additional hours to cover her April 14, 2006, verbal request

⁵ ACRC's records reflect the January 2006 mistakes but were not offered as evidence by ACRC in their case. Claimant's representative offered the ACRC records as part of claimant's case.

because of the numbers and lack of detail reflected on the incorrect April 24, 2006, POS (120 and 312 for a total of 423, not 316).

27. All unfunded 155 respite hours occurred after April 18, 2006.

Attempts to Find Caretakers for Claimant Outside of ACRC

28. Claimant's caretaker attempted to get more hours, from two sources other than ACRC, to help with claimant's care while she recovered from surgery: In-Home Supportive Services and California Children's Services.

LEGAL CONCLUSIONS

Applicable Law and Jurisdiction

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act), governs this case.⁶ The Lanterman Act provides for an administrative "fair hearing" appeal of a proposed service agency decision to determine the rights and obligations of a consumer and the involved service agency.⁷ Claimant timely requested a fair hearing to appeal ACRC's May 2006 denial of payment for respite services already completed. Jurisdiction was therefore established.

Burden and Standard of Proof

2. The Lanterman Act does not assign the burden of proof to either party. Its fair hearing procedures merely provide that, absent an agreement or good cause, the service agency shall present its witnesses and evidence first, but that this requirement "does not alter the burden of proof."⁸ No appellate court has decided this issue regarding the Lanterman Act; however, appellate courts have dealt with similar issues in other contexts. Where an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on her.⁹ Most recently, the United States Supreme Court held that the burden of proof in an administrative hearing challenging an individualized education program under the Individuals with Disabilities in Education Act, 20 U.S.C. 1400 et seq., is on party seeking relief.¹⁰

⁶ Welfare and Institutions Code section 4500 et seq. Unless otherwise specified, all further statutory references are to the Welfare and Institutions Code.

⁷ Sections 4700 through 4716.

⁸ Section 4712, subdivision (j).

⁹ *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; *Greator v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits].

¹⁰ *Schaffer v. Weast* (Nov. 14, 2005) 126 S. Ct. 528, 2005 U.S. Lexis 8554.

3. As no other statute or law specifically applies to the Lanterman Act, the degree of proof in this case is preponderance of the evidence.¹¹

4. In this matter, claimant has the burden of proof, by a preponderance of the evidence, that ACRC is obligated to fund 155 respite hours already completed by a respite worker.

Claimant's IPP and IPP Supplementation

5. To determine how an individual client is to be served, regional centers are directed to conduct a planning process that results in an individual program plan, or IPP, that is designed to promote as normal a life as possible.¹² The IPP is developed by an interdisciplinary team and must include participation by the client and/or his or her representative. The IPP must, among other things, set forth goals and objectives for the client, contain provisions for the acquisition of services, and reflect the client's particular desires and preferences.¹³ A regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP.¹⁴ The IPP must be reviewed periodically and may be modified to cover emergencies or other changing needs.¹⁵

6. Claimant's IPP identifies claimant's need for respite services. The issue in this matter is not whether claimant should receive respite services, or how many hours claimant will need, but whether ACRC must pay for certain hours already worked by a respite worker that ACRC alleges were unauthorized.

ACRC's Coordination and Communication Responsibilities

7. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of their "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible.¹⁶

¹¹ Evidence Code section 115.

¹² Section 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.

¹³ Sections 4646, 4646.5, subdivision (a)(1), (2) and (4), 4512, subdivision (b), and 4648, subdivision (a)(6)(E).

¹⁴ Section 4648, subdivision (a)(1).

¹⁵ Section 4646.5.

¹⁶ Sections 4501 and 4502, subdivision (a).

8. The Lanterman Act general provisions at section 4501 state, in pertinent part:

[¶]...[¶]

The complexities of providing services and supports to persons with developmental disabilities requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports.

[¶]...[¶]

9. As found in Factual Findings 7 through 12, ACRC worked with claimant's caretaker to help meet claimant's temporary changed respite service need. In addition, ACRC added hours at various times and continued to inform claimant's caretaker of potential available respite hours. Moreover, ACRC funded all 473 authorized respite hours.

10. Claimant has failed to prove, by a preponderance of the evidence, that ACRC is obligated to fund the currently unfunded 155 respite hours already completed by a respite worker.

11. However, as found in Factual Findings 13 through 17, 19, 21, and 24, there were many miscommunications and miscues by ACRC concerning the number of available respite hours when claimant's caretaker was planning for his care.

12. Based upon Factual Findings 18, 20, 22, 23, and 25 through 27, it was not unreasonable for claimant's caretaker to assume that ACRC authorized respite hours, after April 18, 2005, in excess of 473 funded hours. In addition, as found in Factual Findings 7, 8, 25, and 28, claimant's caretaker made efforts to secure and confirm care for claimant, including care outside of ACRC. Claimant has proved by a preponderance of the evidence that his caretaker took reasonable steps to secure his care services and that, contrary to its responsibility, ACRC was involved in miscommunications and miscues in coordinating those services.

13. Based upon claimant's caretaker's incorrect but reasonable assumptions concerning the number of authorized respite hours for the second quarter of 2006, and ACRC's share of blame in helping cause claimant's caretaker's incorrect but reasonable assumptions, ACRC shall fund a reasonable share of the unfunded respite hours already completed by a respite worker.

14. Based upon the information ACRC furnished to claimant's caretaker on April 18, 2005, that 172 hours were available and not 75, and assigning a one-third responsibility to ACRC for completed but unfunded respite hours, ACRC shall fund 32 of the 155 completed respite hours $([172-75] \times [.33])$.

ORDER

1. According to Legal Conclusion 10, claimant's request for 155 respite hours completed by a respite worker above the 316 hours authorized for the second quarter of 2006 is DENIED; and
2. According to Legal Conclusions 11 through 14, ACRC shall fund 32 respite hours that were completed by claimant's respite worker in the second quarter of 2006.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days of receiving notice of the final decision in accord with Welfare and Institutions Code section 4712.5, subdivision (a).

DATED: September 20, 2006

RALPH J. VENTURINO
Administrative Law Judge
Office of Administrative Hearings